

Chapter 1 Basic Policy for Act for Eliminating Discrimination against Persons with Disabilities

The “Act for Eliminating Discrimination against Persons with Disabilities” has been enforced since April 2016. This chapter explains the outline of the Act in Section 1, the contents of the Basic Policy, Handling Directions and Handling Guidelines based on the Act in Sections 2 and 3, and the efforts for enforcement of the Act in Section 4.

Section 1 Act for Eliminating Discrimination

1 Background

“The Convention on the Rights of Persons with Disabilities (hereinafter referred to as “CRPD”) the first global treaty for persons with disabilities, was adopted in 2006 and took effect in 2008. It defines measures, etc., to realize the rights of persons with disabilities to ensure the sharing of human rights and fundamental freedom of persons with disabilities and promote the respect for inherent dignity of the said persons. The CRPD, which was adopted in 2006 and became effective in 2008, requires signatories to take appropriate measures to prohibit discrimination on the basis of disability, including denial of reasonable accommodation, and, in Japan, when the Basic Act for Persons with Disabilities was revised in 2011, “prohibition of discrimination” was stipulated as a “basic principle” in Article 4 of the said Act to reflect the objective of the provisions regarding the prohibition of discrimination in the CRPD.

This regulation was embodied into the “Act for Eliminating Discrimination against Persons with Disabilities” (hereinafter referred to as “Act for Eliminating Discrimination”), in order to eliminate discrimination against persons with disabilities and to realize society where all people can share respect for human rights and personality without being discriminated on the grounds of disabilities. The Act was enacted in June 2013 and enforced from April 2016. (The outline of the Act is shown in Figure 1).

2 Outline

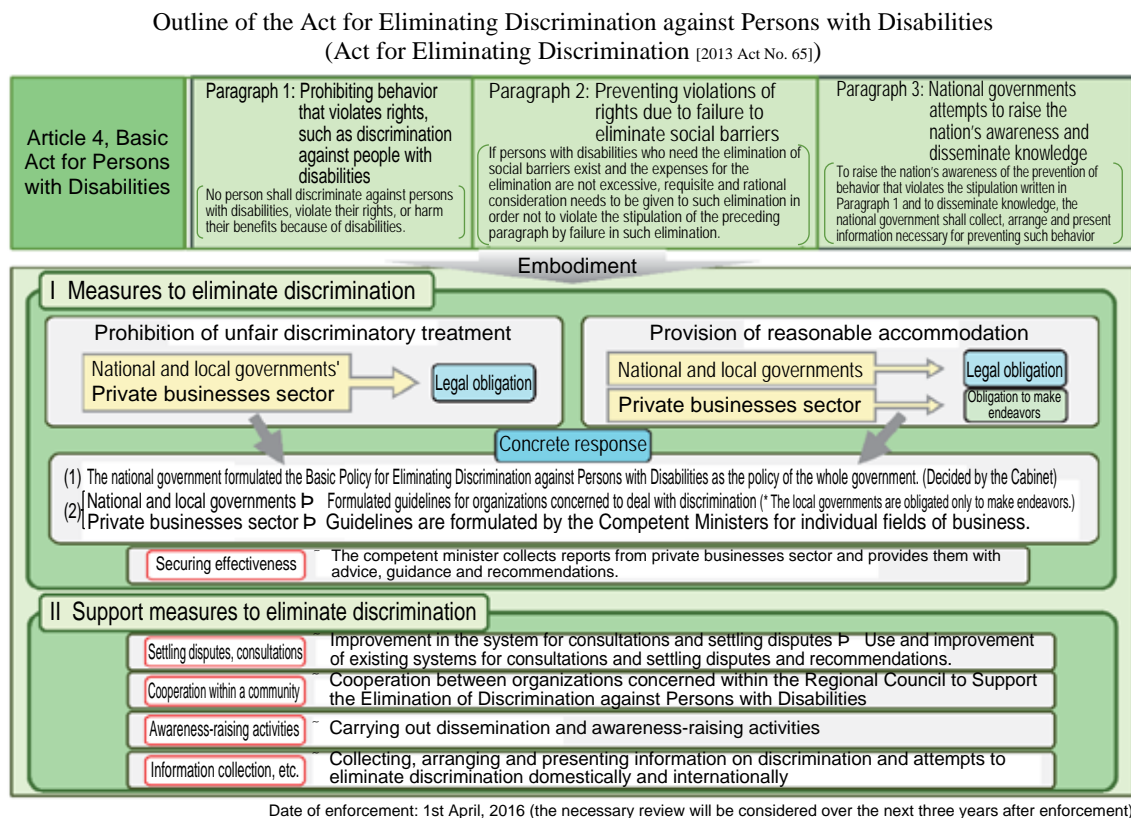
(1) Scope of the Act

This Act deals with all fields relevant to the independence and social participation of persons with disabilities, including employment, education, medical services and public transportation. Note that concrete measures for the elimination of discrimination in the field of employment (the parts corresponding to Article 7 through Article 12 of this Act) are considered to be secondary to the associated provisions of the Act for Employment Promotion of Persons with Disabilities.

(2) Prohibition of Discrimination on the Grounds of Disability

Act for Eliminating Discrimination includes two concepts, “Prohibition of unfair discriminatory treatment” and “Provision of reasonable accommodation.” “Unfair discriminatory treatment,” for instance, refers to such acts as refusing, restricting or making conditions to offer goods and services or opportunities on the grounds of disability, without any proper reason. Anybody regardless of administrative bodies or businesses is prohibited to do such acts.

☪ Figure 1 Outline of the Act for Eliminating Discrimination



“Reasonable accommodation” means to extend a helping hand to persons with disabilities as much as possible, so that they can overcome social barriers (any obstacle, such as things, systems, practices, notions, etc. that constitute barriers against their daily lives), when such persons, their family or their helper seek for reasonable accommodation. Examples include helping a wheelchair user to ride a vehicle, helping communications by writing or reading messages loud, or arranging time for break. Violation of the rights and interests of persons with disabilities due to a lack of such consideration falls under discrimination on the grounds of disability.

However, the obligation to provide reasonable accommodation is not uniformly imposed on all entities. The obligation to provide reasonable accommodation is imposed on organizations including governmental agencies as entities that ought to take the lead in implementing these measures, while the obligation to provide reasonable accommodation is limited to the obligation to make endeavors for businesses sectors.

This limitation is based on the fact that this Act is broad in scope and that the relationship between persons with disabilities and businesses sectors depends on the specific situation, which means that reasonable accommodation can take various forms.

(3) Specification of the Details of Discrimination According to the Handling Directions and Handling Guidelines and Assurance of Effectiveness

What specifically falls under “unfair discriminatory treatment” and what is specifically required as “reasonable accommodation,” shall be examined according

to the specific situation and it would be difficult to list such matters in laws in advance. Therefore, in order to appropriately comply with the prohibition of discrimination against persons with disabilities and promote voluntary efforts to eliminate discrimination against persons with disabilities, examples of unfair discriminatory treatment and good cases of reasonable accommodation shall be indicated in Handling Directions and Handling Guidelines in the future.

a. Efforts of Organizations Including Governmental Agencies

The administrative agencies including national and local governments have developed “Handling Directions” so that the staff members respond properly to persons with disabilities in accordance with the guidance (local governments are obliged to develop them). If the staff breached the “Act for Eliminating Discrimination,” they are forced to correct behavior according to the Public Service Regulations or administrative counselling.

b. Efforts of Businesses Sectors

Business operators are advised to make voluntary efforts not to discriminate against persons with disabilities in accordance with the “Handling Guidelines” which are formulated based on the “Act for Eliminating Discrimination” by the Competent Minister responsible for individual fields of business. When particularly necessary, the Minister can give advice, guidance and recommendation to business operators or seek them to submit a report.

c. Reflection of opinions from people concerned

For preparation of Handling Directions and Handling Guidelines, it is necessary to reflect opinions from persons with disabilities and people concerned.

(4) Support Measures by the National Government and Local Governments

a. Counselling and dispute resolution

To effectively eliminate discrimination against persons with disabilities, it is necessary to respond to their consultations by considering their gender, age, situations, etc. There have been various systems for consultations and dispute resolution: e.g., the Regional Administrative Evaluation Bureaus, the District Administrative Evaluation Offices, administrative counselors can provide administrative counseling service, while the Regional Legal Affairs Bureau, the District Legal Affairs Bureau, and the Human Rights Committee can respond to consultation on human rights problems and investigate and provide remedy for human rights violation. So, no new organization will be established, instead existing systems will be improved under the Act for Eliminating Discrimination.

b. Cooperation in regions

Even though persons with disabilities can engage in daily and social life actively in each region, they may have difficulty in choosing suitable organizations to consult on discrimination, and sometimes their problems cannot be solved by such organizations alone depending on the contents. So, it is important to make a network of “Regional Support Councils for Eliminating Discrimination against Persons with Disabilities” through which various organizations in the region can have a close relationship with each other to know and share their individual functions and efforts.

This Council can consist of the national and local governments’ organizations, organizations of persons with disabilities, NPO corporations, experts and others

who are regarded as necessary. These groups are desired to cooperate and make a network among them so that the counselling and dispute resolution functions can be improved, without a bureaucratic runaround. Further, the persons who engage/engaged in clerical work in the Regional Council are obliged to maintain confidentiality of personal information of persons with disabilities.

c. Enlightenment activity and information collection

Because disability discrimination mainly arises from prejudice or a lack of understanding/knowledge, the national and local governments shall do enlightenment activity against disability discrimination, while the government shall collect information about domestic and overseas efforts against discrimination, sort out the data, disseminate them, and raise awareness around the country.

Section 2 Basic Policy

1 Background

The promotion of the elimination of discrimination against persons with disabilities shall concern all fields relevant to the independence and social participation of persons with disabilities including employment, education, medical services, and public transportation and affect policies across different offices and ministries. The national government shall establish the “Basic Policy for Eliminating Discrimination against Persons with Disabilities” (hereinafter referred to as “Basic Policy”) in order to implement measures for promoting elimination of discrimination through comprehensive and integrated efforts pursuant to the provisions of Article 6, Paragraph 1 of the Act for Eliminating Discrimination. (See Figure 2 for the outline of the Basic Policy.)

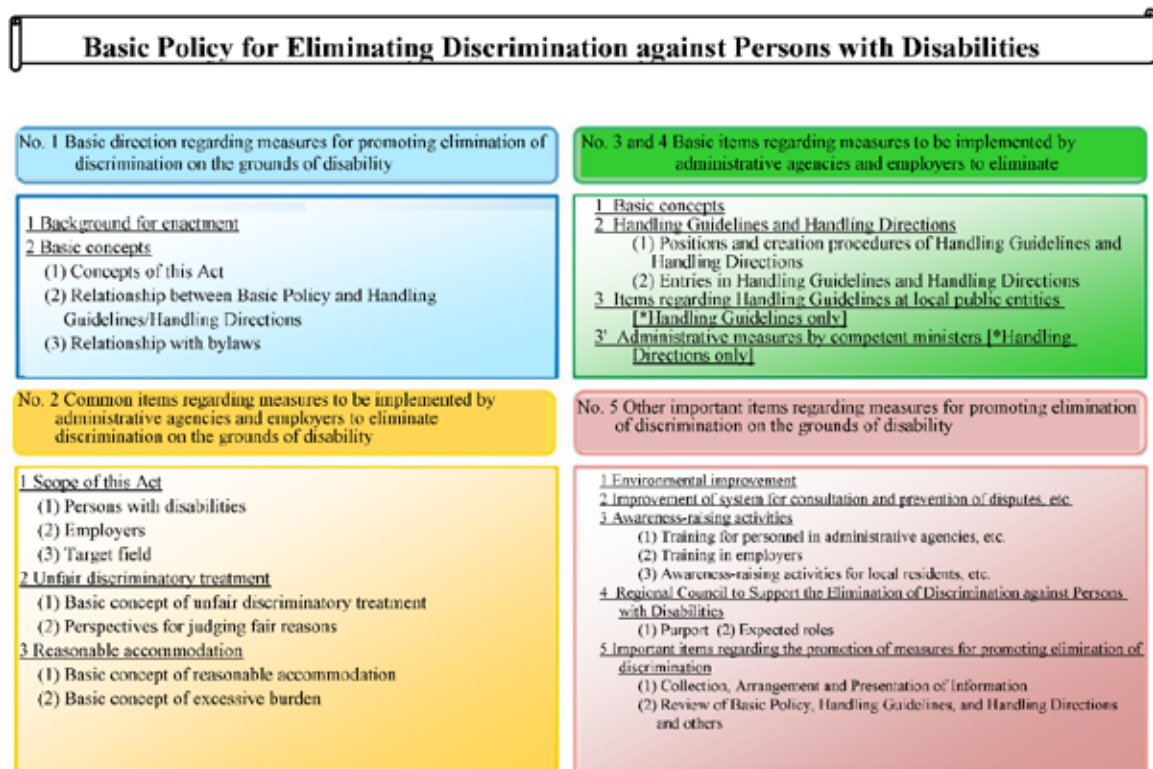
As for the examination of the draft of the Basic Policy, the Commission on Policy for Persons with Disabilities conducted a hearing of parties concerned such as the organizations of persons with disabilities and employers and examined the draft through discussion based on opinions from 30 organizations of persons with disabilities themselves and 25 organizations of employers, etc. Then, after public comments were accepted for 30 days, the Basic Policy was endorsed by the Cabinet on February 24, 2015.

2 Outline

(1) Scope of Act

The Act for Eliminating Discrimination defines “persons with disabilities” in the same way as the Basic Act for Persons with Disabilities: “a person with a physical disability, a person with an intellectual disability, a person with a mental disability

Figure 2 Outline of the Basic Policy



(Decided by the Cabinet in February 2015)

(including developmental disabilities), and other persons with disabilities affecting the functions of the body or mind (hereinafter referred to collectively as “disabilities”), and who are in a state of facing substantial limitations in their continuous daily life or social life because of a disability or a social barrier” These limitations are not only attributed to disabilities (including those due to incurable diseases), but also attributed to “a social model” or social environment disturbing their activity. The Basic Policy also provides this definition and clearly states that “persons with disabilities” shall not be limited to holders of disability certificates but also include persons with higher brain dysfunction.

It also states that women with disabilities may be placed in complicated and difficult situations and that children with disabilities need to be supported differently from adults with disabilities.

(2) Unfair discriminatory treatment

a. Basic stance against unfair discriminatory treatment

Violation of rights of Persons with Disabilities and interests on the grounds of disability is prohibited as an unfair discriminatory treatment. It includes, without any proper reason, refusing to offer goods and services or opportunities, restricting a place or timeframe to offer such things, or making conditions that are not made for non-handicapped persons.

Special measures, such as a discount system applied to persons with disabilities and various allowances necessary for them, do not fall under unfair discriminatory treatment.

b. Judgement of legitimate reasons

A legitimate reason is the case that refusing to offer goods and services or opportunities on the grounds of disability can be justified from an objective viewpoint and understood as unavoidable for legitimate purposes. Whether it falls under a legitimate reason need to be judged comprehensively and objectively according to a specific occasion and situation in light of the rights and interests among persons with disabilities, business operators, and the third parties (examples are securing safety; property preservation; maintenance of the purpose, content and function of the operation; prevention of occurrence of loss, etc.); as well as the purpose, content and function of administrative agencies’ office work and operation. If administrative agencies and business operators judge that it is justifiable, they should explain the reasons and make efforts to persuade persons with disabilities.

(3) Reasonable Accommodation

a. Basic Concept of Reasonable Accommodation

Reasonable accommodation is diverse and highly individual, varying depending on the nature of disabilities and the specific circumstances or conditions under which social barriers must be eliminated. Reflecting the actual conditions faced by an individual with disabilities, a necessary and reasonable range of accommodation including selection of alternative measures should be provided flexibly in consideration of the elements listed in section B below, “Basic Concept of Excessive Burden” and through mutual understanding based on reciprocal constructive dialogs. Furthermore, the content of reasonable accommodation may change according to the progress of technology, changes in social conditions, etc.

The Basic Policy lists the following items as examples of reasonable accommodation conceivable at present.

- Accommodation for physical environments such as placing a portable slope over a step for wheelchair users and handing them products that are displayed on high shelves
- Accommodation for communications such as writing, reading aloud, and using sign language as well as giving explanation using simple expressions
- Flexible change of rules and practices according to the nature of disabilities such as adjustment of rest breaks

Intentions may be communicated using necessary means (including interpreters) such as language (including sign language), braille, enlarged text, written messages, showing of real objects, signs including gestures, and communication by means of touch.

If there are expected to be many persons with disabilities who need reasonable accommodation or if the relationship with persons with disabilities extends over a long period of time, it is important to achieve middle- or long-term cost reduction or efficiency improvement by taking the environmental improvement into consideration as described below, instead of supplying reasonable accommodation each time.

b. Basic Concept of Excessive Burden

An excessive burden is to be judged comprehensively and objectively according to specific circumstances or conditions of each case. The Basic Policy lists the elements to be considered in judging an excessive burden as follows: Degree of influence on administrative and business affairs (whether it impairs the purpose, content, or function of administrative and business affairs), degree of feasibility (physical or technical constraints or personnel or organizational constraints), degree of cost and burden, scale of administrative and business affairs, and fiscal and financial conditions.

(4) Other Important Matters

a. Environmental Improvement

To ensure that reasonable accommodation shall be provided to individual persons with disabilities in individual circumstances, it is important to pursue making the following environmental improvements: Promoting barrier-free designs mainly for an indefinite number of persons with disabilities, providing physical support for expressing their intent or having communications, and improving the accessibility to information. The environmental improvements include not only these tangible aspects but also intangible aspects such as training.

b. Important Matters Regarding Promotion of Measures to Eliminate Discrimination

- **Collecting, Arranging and Presenting Information**
Efforts shall be made to collect and arrange specific examples, court precedents, etc. in Japan and gather international trends and information in order to provide them to the public in general through the White Paper on Persons with Disabilities, the website of the Cabinet Office, etc.
- **Reviewing the Basic Policy, Handling Directions, and Handling Guidelines**
The Basic Policy, Handling Directions, and Handling Guidelines shall be reviewed as required and expanded on a timely basis based on the accumulated

specific examples of unfair discriminatory treatment and reasonable accommodation.

When the situation of implementation is reviewed in three years after enforcement of the Act for Eliminating Discrimination, the Basic Policy shall also be reviewed as specified.

Section 3 Handling Directions and Handling Guidelines

(1) Handling Directions

Administrative agencies shall formulate “Handling Directions” including specific examples, based on the Basic Policy in order to prohibit unfair discriminatory treatment and to provide reasonable accommodation (local governments are obliged to make efforts). Such Handling Directions shall be established as one of the Public Service Regulations the staff members should obey, and formulated by reflecting opinions from persons with disabilities and other people concerned.

The Handling Directions of individual administrative agencies include in common the following items.

- Purpose
- Prohibition of unfair discriminatory treatment
- Provision of reasonable accommodation
- Responsibility of supervisors
- Disciplinary action
- Improvement of counselling systems
- Training and enlightenment
- Consideration upon Handling Directions
 - Basic stance against unfair discriminatory treatment
 - Judgement of legitimate reasons
 - Specific examples of unfair discriminatory treatment
 - Basic stance for reasonable accommodation
 - Basic stance on excessive burden
 - Specific examples of reasonable accommodation

(2) Handling Guidelines

Each Competent Minister, who has the jurisdiction over the types of business, shall prepare “Handling Guidelines” including specific examples, based on the Basic Policy, so that business operators know the detail of unfair discriminatory treatment and reasonable accommodation to properly respond and judge. (They are obliged to make efforts.)

The Handling Guidelines prepared by individual Competent Ministers include in common the following items.

- Purport
 - Process of the establishment of the Act
 - Basic concept of the Act
 - Positioning of the Handling Guidelines
- Basic stance against unfair discriminatory treatment on the grounds of disability and for reasonable accommodation
 - Unfair discriminatory treatment (basic stance, judgement of legitimate reasons, etc.)
 - Reasonable accommodation (basic stance, standpoint on excessive burden, etc.)
- Improvement of business operators’ counselling systems
- Training and enlightenment by business operators
- Consultation desk at business operators who are under the jurisdiction of Competent Minister

- Specific examples of unfair discriminatory treatment and reasonable accommodation

(3) Reasonable Accommodation Search

Based on the Act for Eliminating Discrimination, the Cabinet Office has, since December 2015, posted on the website, “Reasonable Accommodation Search,” a data collection including examples of reasonable accommodation widely shared in society (<http://www8.cao.go.jp/shougai/suishin/jirei/index.html>). The Reasonable Accommodation Search includes a retrieval function so that users can view the information by type of disabilities and by scene of living. In the future it will be improved by collecting more data under the enforcement of the Act for Eliminating Discrimination.

Figure 3 Top page of “Reasonable Accommodation Search”

合理的配慮等具体例データ集

合理的配慮サーチ

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検索例

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- 合理的配慮サーチ 環境整備 接客

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合理的配慮等具体例データ集

合理的配慮サーチ

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障害の種別から探す

1 全無	2 聴覚障害	3 視覚障害
4 盲ろう	5 肢体不自由	6 知的障害
7 精神障害	8 発達障害	9 性被害

生活の場面から探す

1 行政機関	2 教育	3 雇用・就業
4 公共交通	5 医療・福祉	6 サービス(買物、飲食店など)
7 災害時		

Section 4 Efforts Based on the Act for Eliminating Discrimination

(1) Project for developing a system for Regional Support Councils for Eliminating Discrimination against Persons with Disabilities

Article 17 of the Act for Eliminating Discrimination stipulates that national and local governments shall be able to organize “Regional Support Councils for Eliminating Discrimination against Persons with Disabilities” (hereinafter referred to as “Regional Council”), in order to make a network to share information on consultations on regional disability discrimination and to eliminate discrimination smoothly and effectively. To establish a Regional Council, which responds to regional situations, the Cabinet Office has launched since FY 2013 a “Project for developing a system for Regional Support Councils for Eliminating Discrimination against Persons with Disabilities” (hereinafter referred to as “System development project”) by holding a “Review Meeting on the Regional Support Councils for Eliminating Discrimination against Persons with Disabilities” (hereinafter referred to as “Review Meeting”).

In FY 2013, the government improved the “Interim Guidelines for Establishing and Operating the Project for developing a system for Regional Support Councils for Eliminating Discrimination against Persons with Disabilities” (hereinafter referred to as “Interim Guidelines”); and has been making efforts since FY 2014 for eliminating disability discrimination in cooperation with local governments which have or already had the ordinance for disability discrimination; and has been verifying its effect and influence in the Review Meeting.

The government held a model meeting in each district in cooperation with local governments to improve the consultation systems and address institution-related issues toward the elimination of disability discrimination: in FY 2014 in Iwate and Chiba Prefectures and Saitama and Urayasu Cities; in FY 2015 in Kanagawa (western Shonan area), Kagoshima and Niigata Prefectures and Akashi City.

Also the government held a “interim briefing session” on the System Development Project together with local governments that have been holding a model meeting, in order to share the contents with the related-organizations that have been promoting the elimination of discrimination, and held in March 2016 “a final briefing session” and reported the results to nationwide local governments and the related-groups.

Since FY 2015, the government has been dispatching the members of the “Review Meeting” as advisors to the local governments that are studying about establishing a Regional Council; and supported their efforts involved in the establishment. In FY 2015, such advisors were sent to 20 local governments.

Along with the enforcement of the Act for Eliminating Discrimination, the government revised the interim guidelines and created the “Guidelines for Establishing and Operating a Regional Support Councils for Eliminating Discrimination against Persons with Disabilities” and prepared the “Guidance for Establishing a Regional Support Councils for Eliminating Discrimination against Persons with Disabilities” to back up the local governments to establish a Council.

Figure 5 Posters of the Act for Eliminating Discrimination against Persons with Disabilities

平成28年4月1日から施行!

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ホームページ：http://www8.cao.go.jp/shougai/index.html

*For the leaflet, refer to the website of the Cabinet Office
<http://www8.cao.go.jp/shougai/suishin/sabekai.html>

☞ Figure 6 Holding of “Regional Forum”

- FY 2013

Period	From December 2013 to March 2014
Venue	10 places in Japan: Okinawa, Chiba, Nagasaki, Ehime, and Hiroshima Prefectures, Sendai City, Hokkaido, Niigata and Shizuoka Cities, and Osaka Prefecture (in order of holding)

- FY 2014

Period	From January 2015 to March 2015
Venue	8 places in Japan: Urayasu and Saitama Cities, Kagoshima Prefecture, Nagoya City, Iwate , Ibaraki and Yamanashi Prefectures and Tokyo (in order of holding)

- FY 2015

Period	From November 2015 to February 2016
Venue	Total 10 districts: Yamaguchi Prefecture, Akashi City, Tochigi and Mie Prefectures, western Shonan area, Fukui and Kagawa Prefectures, Niigata City, Kagoshima and Akita Prefectures (listed in order of when the forum was held)

☞ Figure 7 Briefing session on the project for developing a system for Regional Support Councils for Eliminating Discrimination against Persons with Disabilities



Interim briefing session (Niigata City)



Final briefing session (Tokyo)

☞ Figure 8 Regional Forum toward elimination of disability discrimination



Kagawa Prefecture



Tochigi Prefecture